

HB 135

2005
CS

CHAMBER ACTION

1 The Judiciary Committee recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5 A bill to be entitled

6 An act relating to liability of providers of streetlights;
7 creating s. 768.1382, F.S.; providing definitions;
8 including certain security or area lights within the
9 definition of the term "streetlight"; limiting liability
10 of a streetlight provider for injury or death or property
11 damage affected or caused by a malfunctioning streetlight;
12 providing procedures for notice and repair of
13 malfunctioning streetlights as a condition for limited
14 liability; providing that noncompliance with such
15 procedures does not create a presumption of negligence;
16 limiting liability of a public utility or electric utility
17 that discontinues service to a streetlight under certain
18 circumstances; limiting liability of a public utility or
19 electric utility for the design, layout, quantity, or
20 placement of streetlights or level of illumination
21 resulting from the proper operation of a streetlight or
22 series of streetlights; prohibiting certain findings of
23 fault of an entity not a party to litigation; providing

Page 1 of 7

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb0135-01-c1

HB 135

2005
CS

for conflict, effect, and application; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 768.1382, Florida Statutes, is created to read:

768.1382 Streetlights, security lights, and other similar illumination; limitation on liability.--

(1) As used in this section, the term:

(a) "Actual notice" means notification to the streetlight provider that is acknowledged by the streetlight provider in accordance with its designated procedures by any person of an inoperative or malfunctioning streetlight using the designated procedures specified by the streetlight provider and containing at least the following information:

1. Identification of the streetlight location with such specificity that the location of the streetlight can be identified by the streetlight provider.

2. A description of the nature of the malfunction or failure of illumination of the streetlight.

3. Appropriate contact information as available, such as the name, address, electronic mail address, and phone number of the person making the notification.

(b) "Designated procedures" means the procedures designated by a streetlight provider to provide actual notice as defined in paragraph (a).

HB 135

2005
CS

51 (c) "Person" means any legal or natural person as defined
52 in s. 1.01(3).

53 (d) "Streetlight" means any streetlight, any outdoor
54 security light, or any outdoor area light that is owned or
55 maintained by or for a streetlight provider. The term
56 "streetlight" does not include any customer-owned or customer-
57 maintained streetlight of any type, regardless of its location.

58 (e) "Streetlight provider" means the state or any of the
59 state's officers, agencies, or instrumentalities, any political
60 subdivision as defined in s. 1.01, any public utility as defined
61 in s. 366.02(1), or any electric utility as defined in s.
62 366.02(2).

63 (2) A streetlight provider is not liable and may not be
64 held liable for any civil damages for personal injury, wrongful
65 death, or property damage affected or caused by the malfunction
66 or failure of illumination of such streetlight, regardless of
67 whether the malfunction or failure of illumination is alleged or
68 demonstrated to have contributed in any manner to the personal
69 injury, wrongful death, or property damage, unless the provider
70 has failed to comply with the provisions of subsection (3). A
71 streetlight provider does not have a duty to the general public
72 to own or maintain any streetlight in any manner unless such
73 duty was expressly assumed by written contract. Any duty owed by
74 a streetlight provider is limited to those obligations that are
75 expressly assumed in a written contract with a customer of a
76 streetlight provider and are solely for the benefit of the
77 parties to such written contract.

78 (3) In order for any streetlight provider to have the
79 benefit of the limitation on liability as set forth in
80 subsection (2), the streetlight provider must have complied with
81 the following:

82 (a) The streetlight provider must disclose its designated
83 procedures for providing actual notice of an inoperative or
84 malfunctioning streetlight to its customers through annual
85 inserts in its customers' bills. The streetlight provider must
86 disclose its designated procedures for providing actual notice
87 of an inoperative or malfunctioning streetlight to the general
88 public, and to its customers if bill inserts are not used, in an
89 annual notice paid for by the streetlight provider and published
90 in the relevant newspapers of general circulation.

91 (b) A streetlight provider must repair any inoperative or
92 malfunctioning streetlight within 60 days after receiving actual
93 notice that the streetlight is inoperative or malfunctioning.

94 (c) If a streetlight provider repairs the inoperative or
95 malfunctioning streetlight and the streetlight subsequently
96 again becomes inoperative or malfunctioning, the streetlight
97 provider shall repair such inoperative or malfunctioning
98 streetlight within 60 days after receiving actual notice that
99 the streetlight is again inoperative or malfunctioning
100 subsequent to the prior repair.

101 (d) After a streetlight provider receives actual notice,
102 investigates the report, and determines that the streetlight is
103 functioning properly, such information shall be noted in the
104 streetlight provider's business records. Upon receipt of any
105 subsequent actual notice that the streetlight is again

HB 135

2005
CS

inoperative or malfunctioning, the streetlight provider shall repair the streetlight within 60 days after receiving such subsequent actual notice.

(e) If, upon investigation by the streetlight provider after receiving actual notice of any event described in paragraph (b), paragraph (c), or paragraph (d), the streetlight provider determines that the nature of the repair or replacement cannot be achieved within the 60-day period, the streetlight provider shall make a determination as to the time in which it can complete the corrective action and denote such time in its business records. Except as provided in paragraph (f), a streetlight provider under this paragraph may not take more than 180 days to complete the corrective action after receiving actual notice unless such longer delay is related to actions or decisions made or required by the customer with the responsibility for paying the utility bill for such streetlight or related to a tornado, a severe weather event, or other unforeseen event resulting in severe damage that does not give rise to a declared state of emergency, in which case the streetlight provider shall be subject to the time periods set forth in paragraph (f).

(f) For a streetlight provider operating in a county affected by a state of emergency declared by federal, state, or local authorities, the time periods in paragraph (b), paragraph (c), paragraph (d), or paragraph (e) shall be extended to 365 days after the cessation of the emergency or such longer period of time that may be dictated by the circumstances or 60 days

HB 135

2005
CS

133 after receiving actual notice that the streetlight is
134 inoperative or malfunctioning, whichever is later.

135 (4) Where the streetlight provider is a public utility or
136 an electric utility, the streetlight provider is not liable for
137 any civil damages for personal injury, wrongful death, or
138 property damage affected or caused by the failure of
139 illumination of such streetlights, regardless of whether the
140 failure of illumination is alleged or demonstrated to have
141 contributed in any manner to the personal injury, wrongful
142 death, or property damage, if the streetlight provider
143 disconnected electric or gas service to the streetlight upon the
144 streetlight customer's request or as a result of the streetlight
145 customer's failure to pay electric or gas bills when due or
146 other breach of the applicable streetlight agreement or upon
147 termination of the applicable streetlight agreement. In no event
148 shall a public utility or electric utility be liable or held
149 liable for civil damages for personal injury, wrongful death, or
150 property damage under any circumstance affected or caused by the
151 design, layout, quantity, or placement of streetlights or level
152 of illumination resulting from the proper operation of a
153 streetlight or series of streetlights.

154 (5) In any civil action for damages arising out of
155 personal injury, wrongful death, or property damage when a
156 streetlight provider's fault regarding the provision or
157 maintenance of streetlights is at issue, if the streetlight
158 provider responsible for providing or maintaining the
159 streetlights is immune from liability pursuant to this section
160 or is not a party to the litigation, such streetlight provider

HB 135

2005
CS

161 may not be named on the jury verdict form or be deemed or found
162 in such action to be in any way at fault or responsible for the
163 injury or death or damage that gave rise to the damages.

164 (6) In no event shall a streetlight provider's
165 noncompliance with the provisions of subsection (3) create a
166 presumption of negligence on the part of the streetlight
167 provider in any civil action for damages arising out of personal
168 injury, wrongful death, or property damage.

169 (7) In the event that there is any conflict between this
170 section and s. 768.81, or any other section of Florida Statutes,
171 this section shall control. Further, nothing in this section
172 shall impact or waive any provision of s. 768.28.

173 Section 2. This act shall take effect upon becoming a law
174 and shall apply to causes of action that accrue on or after the
175 effective date.